

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

KLUGMANN, individually and on behalf of all
others similarly situated,

Plaintiff

v.

AMERICAN CAPITAL LTD., MALON
WILKUS and JOHN R. ERICKSON,

Defendants

Civil Action No. 09-cv-00005-PJM

LEHMANN, individually and on behalf of all
others similarly situated,

Plaintiff

v.

AMERICAN CAPITAL LTD., MALON
WILKUS and JOHN R. ERICKSON,

Defendants

Civil Action No. 09-cv-00276-AW

**DECLARATION OF CHARLES J. PIVEN IN SUPPORT OF THE MOTION OF THE
AMERICAN CAPITAL INVESTOR GROUP TO CONSOLIDATE RELATED ACTIONS; TO
BE APPOINTED LEAD PLAINTIFF; AND TO APPROVE PROPOSED LEAD PLAINTIFF'S
CHOICE OF COUNSEL**

I, Charles J. Piven, hereby declare as follows:

1. I am over 18 years of age and am competent to testify to the matters and facts hereinafter set forth. I am a principal of the law firm of Brower Piven, A Professional Corporation.

2. I am counsel for Lead Plaintiff Movants, the American Capital Investor Group. I submit this Declaration in support of the Motion Of The American Capital Investor Group To Consolidate Related Actions; To Be Appointed Lead Plaintiff; And To Approve Proposed Lead Plaintiff's Choice Of Counsel filed pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(3)(B), as amended by Section 101(b) of the Private Securities Litigation Reform Act of 1995 ("PSLRA").

3. Attached hereto collectively as Exhibit A are the true and correct copies of the sworn Certifications of Charles E. Mendinhall, Ron Miller, and Joseph J. Saville (collectively, the "American Capital Investor Group").

4. Attached hereto as Exhibit B is a true and correct copy of the Consolidated Schedule of Transactions and Losses for the members of the American Capital Investor Group reflecting the calculated losses incurred by the members of the American Capital Investor Group as a result of their investments in American Capital securities.

5. Attached hereto collectively as Exhibit C are the true and correct copies of individually signed Declarations by each member of the American Capital Investor Group.

6. Attached hereto as Exhibit D is a true and correct copy of the press release published on December 15, 2008, on *PRNewswire*, a well-known, national business-oriented publication, announcing the pendency of the lawsuit commenced by *Katir* against Defendants herein.

7. Attached hereto as Exhibit E is a true and correct copy of the firm resume of Brower Piven, A Professional Corporation.

8. Attached hereto as Exhibit F is a true and correct copy of the firm resume of Iazard Nobel LLP.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 13th day of February 13, 2009.

/s/ Charles J. Piven

Charles J. Piven